

UNITED STATES DISTRICT COURT  
DISTRICT OF RHODE ISLAND

JOSE FRANCO

v.

: C.A. No. 06-87ML

GUIL BUILT, et. al.

**MEMORANDUM AND ORDER**

In this matter, *pro se* Plaintiff, Jose Franco (“Franco”), a legally incarcerated inmate at the Department of Corrections (“DOC”), Adult Correctional Institutions, Cranston, Rhode Island, filed an Application to Proceed Without Prepayment of Fees and Affidavit on February 24, 2006 (the “Application”). (Document No. 2). The Application has been referred to me for determination. 28 U.S.C. § 636(b)(1)(A); Local R. Cv 72(a).

In his Complaint, Plaintiff alleges he is not receiving all of his incoming mail, including certain religious books. See Complaint at IV. Plaintiff also asserts that mail officer Guil Built is tampering with his mail. Id.

Title 28, U.S.C. § 1915, which governs proceedings *in forma pauperis*, provides in pertinent part:

(g) In no event shall a prisoner bring a civil action or appeal a judgment in a civil action or proceeding under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. § 1915(g).

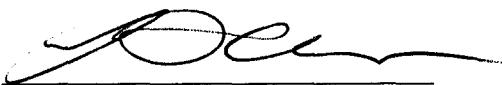
Since October 2002, Plaintiff has filed several lawsuits in this Court including at least three which have been dismissed for failure to state a claim. See Franco v. Reynolds, C.A. No. 03-353 T (dismissed for failure to state a claim on February 13, 2004); Franco v. Reynolds, C.A. No. 03-94 ML (dismissed for failure to state a claim on August 12, 2003); and Franco v. Dale, C.A. No. 04-012 ML (dismissed for failure to state a claim on February 25, 2004). Moreover, Plaintiff does not allege in the instant case that he is under any imminent danger of serious physical injury.

Accordingly, Plaintiff's application to proceed *in forma pauperis* is DENIED (Document No. 2) pursuant to 28 U.S.C. § 1915(g). In addition, in view of such denial, Plaintiff's Motion for Service of Process by the U.S. Marshal Service pursuant to Fed. R. Civ. P. 4(c)(2) (Document No. 4) must also be DENIED. Absent payment of the required filing fee within thirty (30) days by Plaintiff, this Court RECOMMENDS that the District Court DISMISS Plaintiff's Complaint pursuant to 28 U.S.C. §1914(a) and LR Cv 5(c).

IT IS SO ORDERED.

BY ORDER:

ENTER:

  
LINCOLN D. ALMOND  
United States Magistrate Judge  
March 2, 2006

  
Deputy Clerk